Supreme Court, U.S.
FILED
JUN 28 2010
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In The
Supreme Court of the United States
July Term 2010
Case No. 09-1263

SHAHEED TAALIB'DIN MADYUN
Petitioner,

v.

LT. KIRBY LINJER, et al.,
Respondents.

NOTICE OF AND PETITION FOR REHEARING OF THE JUNE 1, 2010 ORDER DENYING OF PETITION FOR WRIT OF CERTIORARI

SHAHEED MADYUN #75225
KMCI
Post Office Box 31
Plymouth, WI 53073-0031

Resubmitted June 25, 2010

BEST AVAILABLE COPY

BRIEFLY STATED GROUNDS

1. The interpretation of both 42 U.S.C. § 1983, And § 42 – U.S.C. § 1997e (a) Amendment By the district court and the Seventh Circuit Court of Appeals has clearly given rise to question. The Constitutionality of the acts of congress, which neither the United States nor any federal department, office, agency, officer or employee is a party. And based upon fairness to the complaining party, and protection of rights, the issue of first impression as presented in this case, whereas, the ruling/interpretation affect the public interest, as is completely prohibits prisoners who are subject to 42 U.S.C. § 1997e (a) from ever filing suits in court. If an agency and court are allowed to require prisoners to act on laws not in existence until a year after the initiation of action required to exhaust all available administrative remedy; and if the prisoner cannot foresee the future laws before they are passed into law, according to the district court and the circuit court, that prisoner is forever barred from filing suit in any court. This is the situation in this case, and the United States should –Take control and intervene for presentation of evidence in this case. See 28 U.S.C § 2403 (a). As the underlying result of the district court ruling has given correctional officials authority to murder inmates without fear of prosecution or lawsuit.

2. This case involves actions by prison officials that amount to attempted first degree murder of a prisoner who was viciously beaten by correctional officers who jammed a night stick up in the prisoners rectum and dislodged his colon, Kicked in his ribs, split his tooth down to the root, busted both of his wrists, fed him ground up razors and medicated his food and damaged the bones in his pelvis. Then denied him medical treatment, causing his body to heal crooked. As a direct result of their actions, this prisoner has been bleeding from his rectum for over eight years. He has had several rectal reconstructive surgeries in attempts to stop the bleeding and pain. The extensive damage caused by officers destroying his colon and denying him medical treatment for over a year has made it impossible to correct. This inmate is permanently crippled and walks with a cane, and recently spent six more months in the hospital again due to problems suffered from the attacks on him in February of 2002. He is entitled to seek redress for harms. The districts courts interpretation of 42 U.S.C § 1997e (a) to put impossible requirements on this prisoner to see into the future is permanent block on all prisoners, because if that is allowed to go unaddressed on the merits of the issue, certain courts may well be prone to requiring prisoners to see further than a year into future laws to be passed in order to initial a lawsuit in court. In the instant case the court only says this prisoner failed to exhaust an administrative remedy.

No where in the record does any court give an answer to this prisoners question of how can he exhaust remedy not in existence during the time the inmate filed the only agency remedy available to prisoners at that time: The warden, Judy Smith [1] provided a sworn affidavit stating the prisoner had no obligation to appeal a rejected complaint to her during the time of the incident, and the inmate had exhausted the only available avenue and remedy when he filed his complaint which was rejected. This is not just a case on the application of 42 U.S.C. § 1997e (a). This is also a case where the district court used the misapplication by applying it to events not in existence. The court further expanded it to denying inmates all discovery requests, denying all interrogatories requests and denying all witness to prisoner. The reality being there was a total denial to access the courts. This matter needs to be put in the competent hand of the United States Government and not left to be addressed by a Pro Se Prisoner. For those stated two reasons, it is asked that the court reconsider its denial of the petition for Writ of Certiorari on June 1, 2010 pursuant to rule 44 (a). It is further asked that a rehearing be granted and that pursuant to 28 U.S.C § 2403 (a) the solicitor general of the United States be required to intervene in this case because of the constitutionality of an act of congress being drawn unto question in this case.

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1 See Exhibit #1 Warden Judy Smith Affidavit

Said solicitor general has now been served with Madyun's petition for Writ of Certiorari, and a copy of this petition. Also the Wisconsin attorney generals office has been served with a copy of this petition. Madyun prays this court grants a rehearing.

Dated This 25 Day of June 2010
Submitted By:

/s/_____
SHAHEED TAALIB'DIN MADYUN
Pro Se Litigant #75225
Kettle Moraine Corr. Inst.
Post Office Box 31
Plymouth, WI 53073-0031

cc: file
STM: kmw

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Wisconsin Attorney General
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Madison, Wisconsin 53707-7857, And

Solicitor General of the U.S.,
Room 5614
Department of Justice
950 Pennsylvania Avenue
N.W. Washington, DC 20530-0001

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

SHAHEED TALLIB'DIN MADYUN, BETTY LOU MADYUN and LARRY KISER,
Plaintiffs

v. Case No. 04-C-0343

LEMON, CAROL COOK, VAN RYAN, JUDY SMITH, JON E. LITSCHER, KENNETH KELLER, CERN PONTO, MARTY SCHROEDER, LIZ LEMERY, VAN GHEEM, SUE KRUEFER, CHRIS KRUEGER, WENDY BRUNS, SHERRY FASSBENDER, CAPTAIN JONES, ANGIE WOOD, PETER ERICKSEN, J SCHWOCHERT, etal.,

Defendants.

AFFIDAVIT OF JUDY P. SMITH

STATE OF WISCONSIN)
) ss.
COUNTY OF WINNEBAGO)

JUDY P. SMITH, being first duly sworn, on oath deposes and states as follows:

1. I make this affidavit based upon my own personal knowledge and review of regularly maintained institution records, in support of

Defendants' Motion for summary Judgment. I have been named as a defendant in the above-entitled action.

2. I have been employed by the Wisconsin Department of Corrections ("DOC") as Warden of Oshkosh Correctional Institution ("OSCI") since September 1996. I have been employed by the State of Wisconsin since March 1980.

3. In my capacity as Warden at OSCI. I have the duties and responsibilities as generally defined by Wis. Stat. § 302.04, and as otherwise specifically set forth in the Wisconsin Statutes and Wisconsin Administrative Code.

4. As Warden, I am responsible for the overall administration and operation of the institution. I have the responsibility at the institution level for implementing all DOC policies ad directives, administrative codes and legislative and judicial mandates.

5. Plaintiff, inmate Shaheed Taalib'din Madyun, was incarcerated at OSCI from April 6, 2001 to June 6, 2002.

6. I have reviewed the Memorandums sent to plaintiff, dated March 8, 2002 and March 12, 2002, respectively, true and correct copies of which are attached and incorporated as Exhibit A.

7. I am aware that plaintiff contends that the March 8, 2002 letter was sent to him in response to an appeal of a rejected complaint he allegedly submitted on or about February 28, 2002.

8. There is no record that plaintiff ever filed an appeal on a rejected complaint on or about this time period.

9. Even if plaintiff had filed an appeal to a rejected complaint, prior to December 1, 2002,

inmates did not submit such appeals to the institution warden unless the complaint was rejected on the grounds that it was deemed frivolous in nature. Such appeals were submitted to the Corrections Complaint Examiner ("CCE"). In addition, plaintiff would not have been sent a memo in response to such an appeal. Appeals were responded to in a different format.

/s/ Judy P. Smith

Subscribed and sworn to before me
This 25th day of August 2005

/s/ (unreadable)
Notary Public State of Wisconsin
My commission expires 12-2009